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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,187	04/26/2001	Thomas M. Baer		2124
7590	12/29/2005		EXAMINER	
Rimas Lukas 465 Kelly Ave., #E Half Moon Bay, CA 94019				CROSS, LATOYA I
		ART UNIT	PAPER NUMBER	1743

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/844,187	BAER ET AL.	
	Examiner	Art Unit	
	LaToya C. Younger	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13,79-82 and 93-108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 5-13,79-82,94-96,101-103 and 105-108 is/are allowed.
- 6) Claim(s) 1-4,93,97-100 and 104 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. This Office Action is in response to Applicants' amendments filed on October 5, 2005. Claims 1-13, 79-82, 93-108 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 93, 97-100, 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansour in view of US patent 6,720,191 to Goldstein et al.

Mansour discloses an assay device for collecting and testing biological samples. The device comprises a base

(45) having a composite material (41) onto which a biological sample is disposed. The base having the biological sample is considered to be a "carrier". The carrier mates with a cover portion (46). The cover portion has an aperture (48), which is a conduit running from the top of the cover to the bottom of the cover. When the cover is mounted onto the base, the sample carrier closes the bottom part of the conduit

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and forms a reservoir (47). There are portions of the carrier on both sides of the conduit that are not in communication with the conduit. In fact a part of the cover covers a portion of the carrier and excludes a part of the carrier from being in communication with the conduit. See figure 5, where a portion of the composite material (41) lies outside of the reservoir (47). Mansour further discloses that a well (10) may be mated with cover at the conduit for delivering fluids into the conduit (col. 12, lines 1-7).

Mansour differs from the instant invention in that the amended claims recite that the carrier closes the first opening so that fluid flow is prevented through the bottom surface of the carrier. Mansour discloses an absorbent multi-layered carrier that would allow flow through the absorbent layers. However, Goldstein et al teach pressure adhesive tapes for use in laser capture microdissection. The tape collects a tissue sample and is subjected to activation by a pulsating laser beam causing the adhesive to flow around the tissue sample and adhere the sample to itself. Further processing and analysis of the sample follows. Goldstein et al teach an alternative carrier to the absorbent carrier disclosed in Mansour. It would have been obvious to one of ordinary skill in the art to incorporate the pressure-sensitive adhesive carrier into the carrier receiving device of Mansour to provide a means of capturing and analyzing a different type of sample (such as a solid sample) that would not be possible with the absorbent carrier disclosed by Mansour. Such modification would involve mere substitution of one known type of carrier for another known type of carrier, as discussed in MPEP 2144.07.

Allowable Subject Matter

5. Claims 5-13, 79-82, 94, 95, 96, 101-103 and 105-108 are allowed for the reasons set forth in the previous Office Action.

Response to Arguments

6. Applicant's arguments filed on October 5, 2005 have been fully considered but they are deemed moot in view of the new grounds of rejection set forth above.
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Thursday 10:30 a.m. - 7:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden
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Technology Center 1700